

REMARKS/ARGUMENTS

In response to the Office Action mailed December 27, 2006, Applicants submit the foregoing amendments.

Claims 1-5, 7 and 13 have been amended.

Claim 1-5, 7 and 13 are pending.

Reconsideration is respectfully requested in view of the above amendments and the following remarks.

Objections

The Examiner objects to claim 5 because the word “wherein” is misspelled as “herein”, and to claim 13 because the word “capable” is misspelled as “coapable”. Applicant has corrected the errors.

Rejection under 35 USC 101

The Examiner rejects claim 7 under 35 USC 101 because claim 7 as recited reads on host cells, including any eukaryotic cells, where the claims reads on host cells that are not isolated or in culture. Applicant has amended the claim by adding the word “cultured”.

Claim 7 now read as “A cultured recombinant host cell containing”

Rejection under 35 USC 112, second paragraph

The Examiner rejects claims 1-3, 5 and 13 under 35 USC 112, second paragraph. More specifically, the Examiner stated that the phrase “substantially same” with respect to the variants of the polypeptide sequence is not defined in the art, nor in the specification. Applicant disagrees, as applicant specifically defined such term on pages 28-30. Moreover, a person of ordinary skill in the art would understand the meaning of “substantially same” when referring to the similarity between two comparable sequences, particularly, when the term is read in light of the entire specification. However, in the interest of advancing prosecution, applicant has amended claims by elimination of the phrase as issue. Accordingly, the rejection to claims 1-3, 5, 7 and 13 based on the term “substantially same” has been obviated.

The Examiner also rejects claim language “hybridizes under stringent condition” in claim 1. Although the Examiner acknowledges that the specification described a specific example to illustrate the “stringent condition”, she states that “the specification does not disclose specific hybridization conditions to be used in the instant invention.” Therefore, the Examiner considered the term “stringent condition” to be ambiguous. Applicant respectfully disagrees with the Examiner, because there is no requirement in law for applicant to provide any example of the claimed invention so long as the invention is described in such a way that a person of ordinary skill in the art would understand the scope of the invention. In the instant case, the example illustrating the “stringent condition” sets the metes and bounds of the term such that the term “stringent condition” is unambiguous. Notwithstanding applicant’s disagreement with the Examiner, applicant has amended claim 1 in the interest of advancing the examination. Accordingly, this rejection has been obviated.

Applicant also amended other claim language in claims 2, 3 and 13 to address the Examiner’s additional rejections under 35 USC 112, second paragraph.

In view of applicant’s amendment to claims 1-3, 5, 7 and 13, the rejections under 35 USC 112, second paragraph, have been overcome and should be withdrawn.

Rejection under 35 USC 112, first paragraph

The Examiner rejects claims 1-3, 5, 7 and 13 under 35 USC 112, first paragraph, for failing to comply with the enablement and written description requirement. Applicant has amended claims 1-3, 5, 7 and 13 as shown above. For the same reason as stated above, rejections under 35 USC 112, second paragraph, have been overcome and should be withdrawn.

Rejection under 35 USC 102

The Examiner rejects claims 1-3, 5, 7 and 13 under 35 USC 102(b) as being anticipated by Klugbauer et al.

Klugbauer et al. teach cloning and expression of calcium channel subunit, $\alpha 2\delta$ -2 and $\alpha 2\delta$ -3, the encoding sequences of which comprise at least 15 sequential bases of SEQ ID NO:9, respectively. Claim 1 has been amended to deleted the limitation reciting “a nucleic

acid molecule comprising at least 15 sequential bases of the polynucleotide of (a) or (b)”. Thus, rejection to claims 1-3, 5, 7 and 13 as being anticipated by Klugbauer et al. has been overcome and should be withdrawn.

In addition, claim 4 has been rewritten to be an independent claim.

Allowance of the amended claims 1-5, 7 and 13 is respectfully requested.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

By: /Yunling Ren/
YUNLING REN
Reg. No. 47,019

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(732) 524-3385
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Epm